

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.24380 of 2007

ORDER :

The petitioner-Somidi Raja Mallaiah maintained the writ petition against the Chief General Manager, (HRD), A.P.N.P.D.C.L., Warangal, and the Superintending Engineer, A.P.N.P.D.C.L., Warangal (Now to read instead of APNPDCL, for the state of Telangana TGNPDCL) for the reliefs in the form of writ, order or direction particularly in the nature of Certiorari to quash the impugned Lr.No.SE/OP/Wgl/PO/JAO/APS/A/D.No.1901/07 dated 07.08.2007 issued by the 2nd respondent-Superintending Engineer, Operation Circle of NPDCL, Warangal, and by holding as consequential the petitioner is entitled for selection and appointment to the post of contract Junior Lineman on the basis of the merit in the test and interview held on 28.05.2007 in the existing vacancies with other consequential benefits.

2. The averments in support of the writ petition affidavit of the petitioner for the said reliefs are that he passed S.S.C. and also I.T.I (Electrical) and his name is entered in the Employment Exchange and he is working as Operator under the Divisional Engineer, TL & SS of the TRANSCO, Warangal, from 2002 and from the notification issued by the respondents supra dated 07.10.2005 and 14.02.2006 and revised notification inviting applications for the post of contract Junior Lineman on or before 14.11.2006 for the 277 posts notified, he applied with by enclosing relevant certificates including experience

certificate issued by the Divisional Engineer duly countersigned by him including with agreement showing the petitioner is working since 2002 even date and he is member of the Provident Fund and he obtained receipt in token of submitting the application expecting selection process from 16.04.2007 that as respondents did not issue call letter even though he is duly eligible and qualified for the post of contract Junior Lineman pursuant to the notification while issuing call letters to the other candidates and when enquired about it, he came to know of not producing the original ITI certificate while submitting the application though he submitted Xerox copies of ITI and also SSC and other experience certificate countersigned by the authorities and non-issuing call letter to him while issuing to others is since unjust. It is his further submission that he filed W.P.No.8608 of 2007 to consider his case for selection and appointment to the post of the contract Junior Lineman pursuant to the notification and another Bench of this Court disposed of the writ petition along with other batch of cases on 26.04.2007 with the following observation:

“In view of specific undertaking given by Sri Sameneni Kishore, the Learned Standing Counsel for A.P.N.P.D.C.L., that the respondents would conduct interviews to all the persons who have approached this Court, irrespective of the fact whether they are eligible or not, no orders need be passed in the Writ Petition. Accordingly, the Writ Petitions are closed. Since the Writ Petitions relates to non-issuance of call letters for interviews, the Learned Standing Counsel for A.P.N.P.D.C.L., shall communicate this

order to the respondents to enable them to conduct interviews to the petitioners.”

3. It is pursuant to the directions supra in the writ petition supra, the respondents even issued call letter in Lr.No.SE/OP/Wgl/PO/JAO/Adm.U1/D.No.1043 of 2007 dated 21.05.2007 to attend the interview and test on 28.05.2007 and to appear consequently to the test and interview and passed the test of pole climbing also thereby entitled to consider for selection and appointment though 170 candidates were given appointment orders the case of the petitioner is ignored, which is illegal. Though he possessed the qualification of ITI before November 2006 when the final notification was issued prescribing the last date of application by 14.11.2006 for no justification in not selecting and appointing or appointing him therefrom despite the Court directions permitted to attend the tests and interview, where qualified even and thereby for his being entitled to the appointment to the post of contract Junior Lineman through impugned proceedings dated 07.08.2007 of he did not possess the qualification of ITI by July 2006 is illegal and arbitrary and he has no alternative remedy but for which is in seeking relief to allow writ petition as prayed for.

4. Along with writ petition, there was a W.P.M.P.No.31750 of 2006 filed by the writ petitioner and this Court passed the following interim order on 10.11.2007:

It appears, the reason for rejecting the case of the petitioner for appointment to the post of Junior Lineman

(contract) is that he obtained the requisite qualification of I.T.I. in July 2006 only and thus he does not possess the requisite qualification as on 06.06.2006, the date of notification. This, prima facie, appears to be not correct. Admittedly, the notification, dated 06.06.2006, was revised on 21.10.2006 and by that time the petitioner possesses the requisite qualifications. Therefore, rejecting the case of the petitioner for the above said reason seems to be unlawful.

Under those circumstances, there shall be interim suspension of the impugned order, dated 07.08.2007. Further, the respondents are directed to re-consider the matter and pass appropriate orders, within a period of four weeks from the date of receipt of a copy of this order, and communicate the same to the petitioner.

5. The counter affidavit filed by the respondents in seeking to vacate the interim stay or direction, to reconsider the matter and pass appropriate orders and communicate the same to the petitioner with observation of rejecting case of the petitioner contended as unlawful, is with contest that the notification dated 06.06.2006 was issued inviting applications for the 277 posts of contract Junior Lineman on or before 14.11.2006, which is also from the revised notification dated 21.10.2006 inviting applications on or before 14.11.2006 and as per notification dated 06.06.2006 the applicant must possess ITI pass certificate and marks list apart from other qualifications, like SSC pass certificate, community certificate, proof of residence, etc., and the revised notification dated 21.10.2006 issued is in continuation of the notification dated 06.06.2006 and as on the date of notification, dated 06.06.2006, the candidate must possess the requisite

qualification including ITI certificate with Electrical Trade and as per condition of the application clause (10) under terms of recruitment application forms not accompanied by the copies mentioned in the notification shall be summarily rejected and as the petitioner did not submit ITI certificate along with the application as per the requirement under clause 10 of the notification supra, his case was not considered and it is in pursuance of the order in W.P.No.8608 of 2007, dated 26.04.2007, call letter was issued directing him to attend the interview and test on 28.05.2007 and because he failed to fulfill the requisite qualification as on 06.06.2006 his case was rejected as could not be selected for the post of contract Junior Lineman and he was called for interview only basing on the writ petition interim direction and for his not possessing ITI qualification well in time as per the notification, which is a compulsory condition for selection to the post, he could not be selected and the action taken by the petitioner denying in his case for selection with the post is fully justified. The revised notification dated 21.10.2006 in continuation of earlier notification dated 06.06.2006, one should possess the educational qualification of SSC or SSLC or 10th class, ITI in Electrical/Wireman or Vocational Course in Electrical Trade is compulsory and the writ petitioner acquired the above qualification belatedly by July, 2006, which is beyond permissible deadlines and what he filed the ITI in the post notification period since unacceptable therefrom speaking orders were issued indicating the reasons for non-

selection by impugned letter dated 07.08.2007 referred supra including by indicating the reasons for rejectment and the selection process conducted was in order and the interim order in W.P.M.P.No.31750 of 2007 dated 19.11.2007 supra is contrary to the notification as one should possess the requisite qualification as on the date of notification and not subsequent thereto and what he acquired qualification is specific thereto in July 2006 and thereby cannot be considered for appointment even any selection process undertaken pursuant to the writ petition directions, thereby sought for vacating the interim order.

6. The reply affidavit dated 04.07.2010 filed by the writ petitioner in response to the same is with averments that pursuant to the notification dated 14.11.2006, he submitted application for the post of contract Junior Lineman in Warangal District dated 21.11.2006 duly enclosing ITI marks memo obtained through internet which he received on 20.11.2006 with experience certificate and other documents like caste certificate, EPF certificate, etc., that were received by the respondents on 21.11.2006 with Sl.No.1455 and when they did not issue call letter on the ground of not submitted the original marks memo, he submitted representation enclosing to permit him to participate in the interview and as they did not permit, he obtained orders in W.P.No.8608 of 2007 and batch on 26.04.2007 referred supra to issue call letter, from which call letter issued on 21.05.2007 and appeared for interview on 28.05.2007 and passed the

pole climbing test, submitted original marks memo of ITI at the time of interview and Xerox copy of the original marks memo replaced in place of internet memo and despite it, appointment to the post of contract Junior Lineman was not considered saying he had not possessed ITI before July 2006 though he passed the same from the result published on 20.11.2006 before the last date of application 21.11.2006 as per the Memo of the Chairman and Managing Director vide CGM (HRD)/GM(S)/AS-II/PO-IV/F.No.126/2006, dated 13.11.2006 and there are several existing vacancies of junior Lineman including under the S.C. quota and that he belongs to S.C. community and non-selection is unjust thereby sought for allowing the writ petition.

7. This Court passed order in vacate stay petition in W.V.M.P.No.751 of 2008 on 05.07.2010, which follows as under:

The petitioner in the writ petition has questioned the order, dated 7th August 2007, rejecting his claim for appointment to the post of contract Junior Lineman on yearly contract basis. The rejection is primarily on the ground that the petitioner was not possessing the requisite qualifications as on the date of Notification, dated 06.06.2006, as revised on 21.10.2006. This Court, on 19.11.2007, while suspending the order of rejection, issued directions to reconsider the matter and pass appropriate orders. In compliance of the directions issued by this Court, respondents have passed orders, dated 16.06.2009, issued in Letter No.SE/O/WGL/PO/JAO/APS(A)/F.No.3229/07-1, a copy of which, is placed on record, when the matter is taken up. By the aforesaid proceedings, again the claim of the petitioner is rejected, on

the ground that on the date of notification, petitioner was not holding the requisite qualification of ITI certificate. It is stated that though further revised notification was issued on 21.10.2006, there was no alteration with regard to the required qualifications as notified in the notification, dated 06.06.2006.

In view of the orders, dated 16.06.2009, passed by the respondents in Letter No.SE/O/WGL/PO/JAO/APS(A)/F.No.3229/07-1 by considering the case of the petitioner in terms of the orders, dated 19.11.2007, and rejecting the same, there is no need to consider the vacate application at this stage.

As much as the respondents have already complied with the orders of this Court, dated 19.11.2007, and passed the orders, dated 16.06.2009, in Letter No.SE/O/WGL/PO/JAO/APS(A)/F.No.3229/07-1, W.V.M.P.No.751 of 2008 and W.P.M.P.No.31750 of 2007 stands disposed of accordingly.

8. Heard both sides at length and perused the entire material on record.
9. With the writ petition dated 15.11.2007, the revised notification is enclosed, which refers the original (earlier) notification dated 06.06.2006, as per which, applications in prescribed form are invited from eligible candidates on or before 14.11.2006 to work as contract Junior Lineman on yearly contract basis in the Operation Circle of Warangal 277 posts, Karimnagar 398, Khammam 99, Nizamabad 423 and Adilabad 237 posts, total 1434 posts, and as per the terms of recruitment, the age is not below 18 years and not above 35 years as on date of earlier notification dated 06.06.2006, for SC/ST/BC candidates the age is relaxable upto five years and the educational

qualifications are SSLC/SSC/10th class with ITI qualification in electrical/wireman trade or Intermediate vocational course in electrical trade is compulsory and Rule of Reservation will be followed as per existing rules and selection criteria mentioned is from the qualification compulsory referred supra, the operation circle/district will be the unit of appointment, pole climbing is compulsory and if the conditions 1 to 3 supra fulfilled, preference will be given to experience persons those presently serving contract labour who are working now for manning of sub-stations of Transco/DISCOMs with recorded evidence through Sub-stations Log books to be certified by the concerned Divisional Engineer or presently serving contract labour for any other works in Transco/DISCOMs with recorded evidence of EPF number in his name to be certified by the concerned DE. As per Clause 7, the selection of the candidates shall be based on verification of the documents viz., SSC pass certificate, ITI Electrician/Wireman/Intermediate Vocational course in Electrical Trade pass certificate and marks list, community certificate, local certificate to be issued by the concerned Panchayat Secretary, two passport size photos attested by a Gazetted Officer in addition to the photos affixed on the application. As per condition No.7, the other terms and conditions of appointment, applications received after due date and time i.e., after 14.11.2006 at 5.00 PM will be rejected summarily and the application forms not

accompanied by the copies of the attested certificates mentioned as above shall be summarily rejected.

10. From this, the pass in SSC and pass in ITI Electrician/Wireman/Intermediate Vocational course in electrical trade and accompanied by the copies of attested certificates with the application to reach by 14.11.2006, to mean he must possess the qualification by the time of applying and there is nothing mentioned as on the date of the original notification dated 06.06.2006 or revised notification of it. Coming to the particulars of the petitioner-S.Rajamalliah, it is at Sl.No.34 in Form-C that shows pass in July 2006 in Government ITI (Boys), Warangal, in Trade of Electrician and the date of trade test between 20.07.2006 and 31.07.2006. As per the writ petitioner, even from the revised notification enclosed and referred supra, there is nothing to show the qualification of passing in ITI must be as on the date of original notification dated 06.06.2006 and what is required from the revised notification paras 9 and 10 referred supra is applications should reach by 14.11.2006 and the application forms are not accompanied by the copies of the attested certificates shall be rejected and so even the writ petitioner passed ITI Electrician trade in July 2006 and not by the date of notification on 06.06.2006, since possessed the qualification by the date of submitting the application, for nothing to show he must possess the qualification by 06.06.2006 and the rejectment is unjust, thereby disqualification of the writ petitioner is unjust. Hence, the writ petition to be allowed.

11. Whereas, it is the submission of learned Standing Counsel for the respondents that the very notification itself once prescribes the qualification of the candidate must possess as on the date of notification to apply within the time limit prescribed and it is not the case of possessing the qualification by the date of respective notifications. But, subsequent acquisition will not be give any right to apply, much less to contend for selection merely because allowed to participate in interview pursuant to the writ direction of this Court and thereby the writ petition is liable to be dismissed.

12. From the submissions of both counsel in this regard, what is contended in the original notification application form, the application form shows as per Column No.9 educational qualifications, academic and technical and not by fixing any date as to which it should be and the revised notification already referred supra and the criteria for selection therefrom speaks is besides passing SSC or SSLC or 10th class, pass in ITI in electrical/wireman/Intermediate Vocational course in electrical trade is compulsory and not mentioned as by the date of the original notification and even from the revised notification what is mentioned is the qualifications are compulsory and not mentioned further of to qualify as on the date of original notification. The original notification inviting applications on or before 10.07.2006 not even mentioned the qualification required as on the date of the original notification on 06.06.2006 from perusal of both the original notification vis-à-vis revised notification. Thereby, even the

notification speaks from 06.06.2006 of earlier notification dated 07.10.2005 and 14.02.2006 those were mentioned as cancelled by the notification dated 06.06.2006, notifying applications from original candidates on or before 10.07.2006, but for revised notification, the petitioner has not acquired qualification. It is needless to say, even the revised notification is in continuous to the original notification dated 06.06.2006, either in the original notification or in the revised notification, there is no mention of the date by which the qualification to be acquired, but for mentioning of submitting the last day for application as per the original notification by 10.07.2006 and the same is extended by revised notification dated 21.10.2006 and last date for applications to reach by 14.11.2006 and in both notifications, the applications must enclose the qualifications of pass in ITI and SSC/SSLC/10th class, as the case may be, it is to say in all force that the qualification must be possessed by the date of submitting the applications and not by the date of original notification. Once the time fixed in the original notification dated 06.06.2006 to submit the applications by 10.07.2006 is extended by revised notification dated 21.10.2006 till 14.11.2006 and these are showing the applicant possessed the pass in ITI by end of July 2006, he is eligible to apply and even internet copy supplied pursuant to the revised notification by agenda, the original certificate issued and Xerox copy obtained at the time of interview, the only criteria is by the time of last date for receipt of the application as per the revised notification which extends

the time from the original notification, he possessed the qualification or not and not to contend that as on the date of original notification itself he must possess, in the absence of such a stipulation in the notification either original or revised. Any such condition or imposing such a condition orally as if a criteria, is framing of rules after game is over as per the expression of the Apex Court. No doubt, the Apex Court in **Shankarsan Dash v. Union of India**¹, held that notification should always contain information either to agree a right or remain of their right to be claimed and a person has no right to public employment, he has only a right to be considered along with others under Article 16 (1) of the Constitution of India and a recruitment agency or appointing authority is liberty to withdraw even recruitment notification at any stage before a person actually conscious in service and unless it is show such withdrawal is arbitrary or irrational, no person got enforcement right to impugn even these notifications only in time the candidates that recruitment is commencement and thus having availed qualifications and prescribed criteria can apply and not to claim as of right even for its specific withdrawal for same no way interference of right to seek for appointment.

13. Having regard to the above, the impugned letter of respondent bearing Lr.No.SE/OP/Wgl/PO/JAO/APS/A/D.No.1901/07 dated 07.08.2007 is unsustainable and arbitrary and thereby quashed the

¹ AIR 1991 SC 1612

same with a direction to the respondents to reconsider the case of the petitioner for appointment from he is having possessed the requisite qualification pursuant to the notification as on the last date for submitting the application pursuant to the notification dated 06.06.2006 revised by the notification dated 21.10.2006 to reach the applications by 14.11.2006, from passed the ITI in electrical trade by end of July 2006, which is otherwise well within the date of revised notification supra; if otherwise eligible in all other respects. It is needless to say, the original recruitment for appointment is for one year and unless it is shown those selected continued even after the period of one year, the petitioner is equally not to be considered for continuation.

14. Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dt:20 -01-2017

mar

Dr. B. SIVA SANKARA RAO, J